

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL LOUKAS,

Petitioner,

Case No. 05-CV-74272-DT
Honorable Avern Cohn

v.

WILLIE O. SMITH,

Respondent.

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OPINION AND ORDER DENYING
PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT

I.

This is a habeas case under 28 U.S.C. § 2254. Petitioner Michael Loukas (Petitioner) filed a petition for a writ of habeas corpus, claiming that he is incarcerated in violation of his constitutional rights. Respondent, through the Attorney General's office, filed a motion to dismiss the petition for failure to comply with the one-year statute of limitations under 28 U.S.C. § 2244(d)(1). The Court granted the motion. See Order filed June 1, 2006. Before the Court is Petitioner's motion under Fed. R. Civ. P. 60(b)(6) to ask that the June 1, 2006 Order be set aside on the grounds that equitable tolling should apply to his case. For the reasons which follow, the motion is DENIED.

II.

A.

In 1983, Petitioner was convicted of armed robbery and felony firearm. He was sentenced to twenty to forty years' imprisonment for the armed robbery conviction and two years' consecutive imprisonment for the felony firearm conviction. He properly filed

his claim of appeal with the Michigan Court of Appeals, which affirmed his convictions and sentences on July 2, 1986. Subsequently, he properly filed an application for leave to appeal to the Michigan Supreme Court, which was denied on December 3, 1986. On March 19, 2004, Petitioner then filed a motion for relief from judgment with the trial court, which was also denied. Thereafter, in November 2005, Petitioner filed a habeas petition with the Court.

The Court dismissed Petitioner's habeas petition as barred by the applicable statute of limitations under 28 U.S.C. § 2244(d). As explained in the June 1, 2006 Order, Petitioner had one year, or until April 24, 1997, to file his petition. Petitioner's habeas petition was eight years late. The Court also found that Petitioner was not entitled to equitable tolling.

B.

Fed. R. Civ. P. 60(b) provides in relevant part:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Importantly, a motion under Fed. R. Civ. P. 60(b) motion does not serve as a substitute for an appeal, or bring up for review a second time the merits of the district court's decision dismissing a habeas petition. See Brumley v. Wingard, 269 F. 3d 629,

647 (6th Cir. 2001); Rodger v. White, 996 F. 2d 1216, 1993 WL 210696, * 1 (6th Cir. June 15, 1993). Petitioner's motion fails to offer any arguments which were not already previously considered and rejected in its June 1, 2006 Order. Indeed, the Court explicitly explained why Petitioner was not entitled to equitable tolling. Accordingly, the motion is DENIED.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: November 2, 2006

I hereby certify that a copy of the foregoing document was mailed to the parties of record and Michael Loukas, 158249, Ionia Maximum Correctional Facility, 1576 W. Bluewater Highway, Ionia, MI 48846, on this date, November 2, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160